

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TERI SUZANE AGETON, Plaintiff, v. NICHOLAS JEROME HOPKINS and TEAM BIONDI, LLC, Defendants.	4:21-cv-21-4148 COMPLAINT AND DEMAND FOR JURY TRIAL
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Plaintiff Teri Suzane Ageton, through her counsel, for her Complaint against Defendants Nicholas Jerome Hopkins and Team Biondi, LLC, states:

Parties

1. Plaintiff Teri Suzanne Ageton (“Teri”) is, and at all relevant times was, a resident of Brandon, Minnehaha County, South Dakota.
2. Defendant Nicholas Jerome Hopkins (“Hopkins”) is a resident of the State of Pennsylvania.
3. Defendant Team Biondi, LLC (“Team Biondi”) is a limited liability company that is incorporated in Pennsylvania, with its principal place of business also in Pennsylvania, and its members residence also being in Pennsylvania.

Jurisdiction and Venue

4. This Court has jurisdiction under 28 U.S.C. § 1332, diversity of citizenship.
5. The damages at issue exceed \$75,000.
6. This Court is the proper venue under 28 U.S.C. § 1391(b)(2).

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Background and Facts

7. On February 1, 2019, Hopkins was operating a 2020 Kenworth-KEWT TT, VIN no. 1XKYDP9X2GJ115451 (“the truck”).
8. Hopkins was working as an agent or employee of Team Biondi and was acting within the course and scope of his employment.
9. Team Biondi owned the truck.
10. Team Biondi authorized Hopkins to drive and operate the truck.
11. Hopkins was driving the truck east on Interstate 90 near mileposts 399 and 400 in Sioux Falls, South Dakota.
12. Hopkins estimated his speed of travel to be 70 mph. A true and correct copy of the accident report is attached to this Complaint as **Exhibit 1**.
13. The speed limit was 65 mph.
14. Teri was also driving east on Interstate 90.
15. Hopkins collided with the rear of the vehicle that Teri was driving.
16. As a result of the collision, Teri’s vehicle ended up in the median.
17. As a direct and proximate result of this crash, Teri has experienced physical pain and suffering, mental anguish, fear of imminent death, loss of enjoyment of life, disability, general weakening of the body, emotional distress and embarrassment, inconvenience, general damages in an amount to be determined by the trier of fact, medical expenses in excess of \$25,000, lost income, and other special damages in an amount yet to be determined. Some losses are permanent or continuing and she will continue to suffer losses in the future.

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Count 1
Negligence

18. Teri Ageton restates the preceding paragraphs of this Complaint as though fully set forth herein.

19. Hopkins negligently, carelessly, and illegally operated the truck, thereby causing the collision involving the parties to this lawsuit on February 1, 2019.

20. Hopkins was speeding.

21. Hopkins failed to drive the truck “as nearly as practicable entirely within a single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety” as required by SDCL § 32-26-6.

22. Among other negligent or dangerous acts, Hopkins was driving without due caution, failed to keep a proper watch, failed to keep a reasonable distance, operated the truck without regard to the presence or physical safety of the public, including Teri, and failed to control the truck, causing him to crash into Teri’s vehicle.

23. As a direct and proximate result of Hopkin’s negligence, Teri has experienced, and will experience in the future, lost wages, pain and suffering, mental anguish, loss of enjoyment of life, disability, emotional distress, anguish and embarrassment and other damages in an amount to be determined by a jury.

24. Team Biondi is liable for the torts of Hopkins under the doctrine of respondeat superior for the damages Teri has suffered and will suffer because of the crash.

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25. As a direct and proximate result of the negligence and carelessness of Hopkins, Teri Ageton sustained the damages described above, for which Hopkins and Team Biondi are jointly, severably, directly, and/or vicariously liable.

Count 2
Negligence Per Se

26. Teri restates the preceding paragraphs of this Complaint as though fully set forth herein.

27. Law enforcement cited Hopkins for violating SDCL § 32-26-6 (Lane driving required—Changing lanes—Violation as misdemeanor).

28. SDCL § 32-26-6 is designed to protect the public safety of travelers on public roads and highways.

29. Teri is a member of the class of people meant to be protected by SDCL § 32-26-6.

30. Hopkins admitted to violating SDCL § 32-26-6 by pleading guilty to the citation.

31. Hopkins violated SDCL § 32-26-6.

32. Teri has suffered injuries that are permanent and disabling which required, and will require in the future, medical treatment and accompanying medical expenses.

33. As a direct and proximate result of Hopkin's negligence, Teri has experienced, and will experience in the future, lost wages, pain and suffering, mental anguish, loss of enjoyment of life, disability, emotional distress, anguish and embarrassment and other damages in an amount to be determined by a jury.

34. Team Biondi is liable for the torts of Hopkins under the doctrine of respondeat superior for the damages Teri has suffered and will suffer because of the collision.

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35. As a direct and proximate result of the negligence and carelessness of Hopkins, Teri sustained the damages described above, for which Hopkins and Team Biondi are jointly, severably, directly, and/or vicariously liable.

Count 3
Respondeat Superior

36. Teri restates the preceding paragraphs of this Complaint as though fully set forth herein.

37. The collision and resulting injuries and damages to Teri were caused solely by the negligence of Hopkins.

38. Hopkins was operating the truck on behalf of Team Biondi.

39. The collision with Teri occurred within the course and scope of Hopkins' employment with Team Biondi.

40. Hopkins was operating the truck for the benefit of, or in furtherance of the interests of, Team Biondi.

41. Hopkins' actions when he struck Teri's vehicle were reasonably foreseeable and, thus, imputable to Team Biondi under the doctrine of respondeat superior.

42. As a result of Hopkins's negligence, Team Biondi is vicariously liable for Hopkins's negligent acts.

Requested Relief

Teri Ageton requests the following relief:

1. Enter judgment in Teri's favor.
2. Award Teri's damages, plus pre- and post-judgment interest to the fullest extent allowed by law.

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3. Award attorneys' fees, disbursements, and costs as allowed by law.
4. Grant such other further relief as the Court deems appropriate under the circumstances.

Demand for Jury Trial

Teri Ageton respectfully demands a trial by jury on all issues so triable.

Dated: August 25, 2021.

FULLER, WILLIAMSON, NELSEN
& PREHEIM, LLP



Derek A. Nelsen
Eric T. Preheim
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(605) 333-0003
dnelsen@fullerandwilliamson.com
epreheim@fullerandwilliamson.com
Attorneys for Plaintiff

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS TERI SUZANE AGETON (b) County of Residence of First Listed Plaintiff <u>Minnehaha, County</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) Derek A. Nelsen and Eric T. Preheim Fuller & Williamson, LLP, 7521 S. Louise Ave., Sioux Falls, SD 57108 (605) 333-0003	DEFENDANTS NICHOLAS JEROME HOPKINS and TEAM BIONDI, LLC County of Residence of First Listed Defendant <u>State of Pennsylvania</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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V. ORIGIN (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. 1332</u> Brief description of cause: <u>Plaintiff alleges injuries and damages sustained as a result of motor vehicle collision caused by Def. Hopkins.</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE 08/25/2021	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY			
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____
			MAG. JUDGE _____



STATE OF SOUTH DAKOTA INVESTIGATOR'S MOTOR VEHICLE TRAFFIC ACCIDENT REPORT		Mail to: Office of Accident Records, 118 W. Capitol Ave., Pierre, SD 57501	
		TraCS ID: 153366-099	TraCS Sequence: 1902050021
Form DPS - AR1 12/12/2014		Agency Use	Report Type
<input type="checkbox"/> Is this only a Wild Animal Hit Report?	Agency Name SD HIGHWAY PATROL	Date of Accident 02/01/2019	Time of Accident 18:55 Hrs.
Reporting Officer Last Name SIEVE	Reporting Officer First Name LUCAS	Reporting Officer Middle Name	Reporting Officer # 099-153366

LOCATION	Location Description ON I 90 E 0.22 MILES WEST OF I 90 E1					
	Latitude 43.605644			Longitude -96.701745		
	County 50	County Name 50 - MINNEHAHA		City or Rural 1225 - Sioux Falls		Roadway Surface Condition 03 - Snow
	On Road, Street, or Highway I 90 E				Roadway Surface Type 01 - Concrete	
	At Intersection with				Roadway Align/Grade 01 - Straight and level	
	Distance 0.4567	Units Miles/Tenths	Direction of East	MRM (milepost) 399.56	Relation to Junction 05 - Intersection related	
	Distance	Units	Direction and	Distance	Units	Direction of
	Junction or Intersecting Street			Name of Junction, Road, Street, or Highway		

✓

001

Traffic Control Device Type 00 - No controls			Vehicle Contributing Circumstance 00 - None		
Vehicle Maneuver 01 - Straight ahead			Road Contributing Circumstance 00 - None		
First Event 25 - Motor vehicle in transport			Second Event		
Third Event			Fourth Event		
Most Harmful Event for this Vehicle 25 - Motor vehicle in transport					
? Does the accident involve one or more of the following: <ul style="list-style-type: none"> • a truck having a GCWR of 10,001 or more pounds; OR • a vehicle displaying a hazardous material placard; OR • a vehicle designed to transport 9 or more people, including driver 			<input type="checkbox"/> Did the accident result in one or more of the following: <ul style="list-style-type: none"> • a fatality; OR • an injury requiring transportation for immediate medical attention; OR • a vehicle was disabled requiring a towaway from the scene 		
Accident Involved Vehicle - Purpose			Carrier Name		
Street Address			Street Address (Line 2)		
City	State	Zip	US DOT # 98	GVWR	GCWR
Hazardous Material Released?	Hazardous Material Content Code	Hazardious Material Class Code		Hazardous Materials Description	

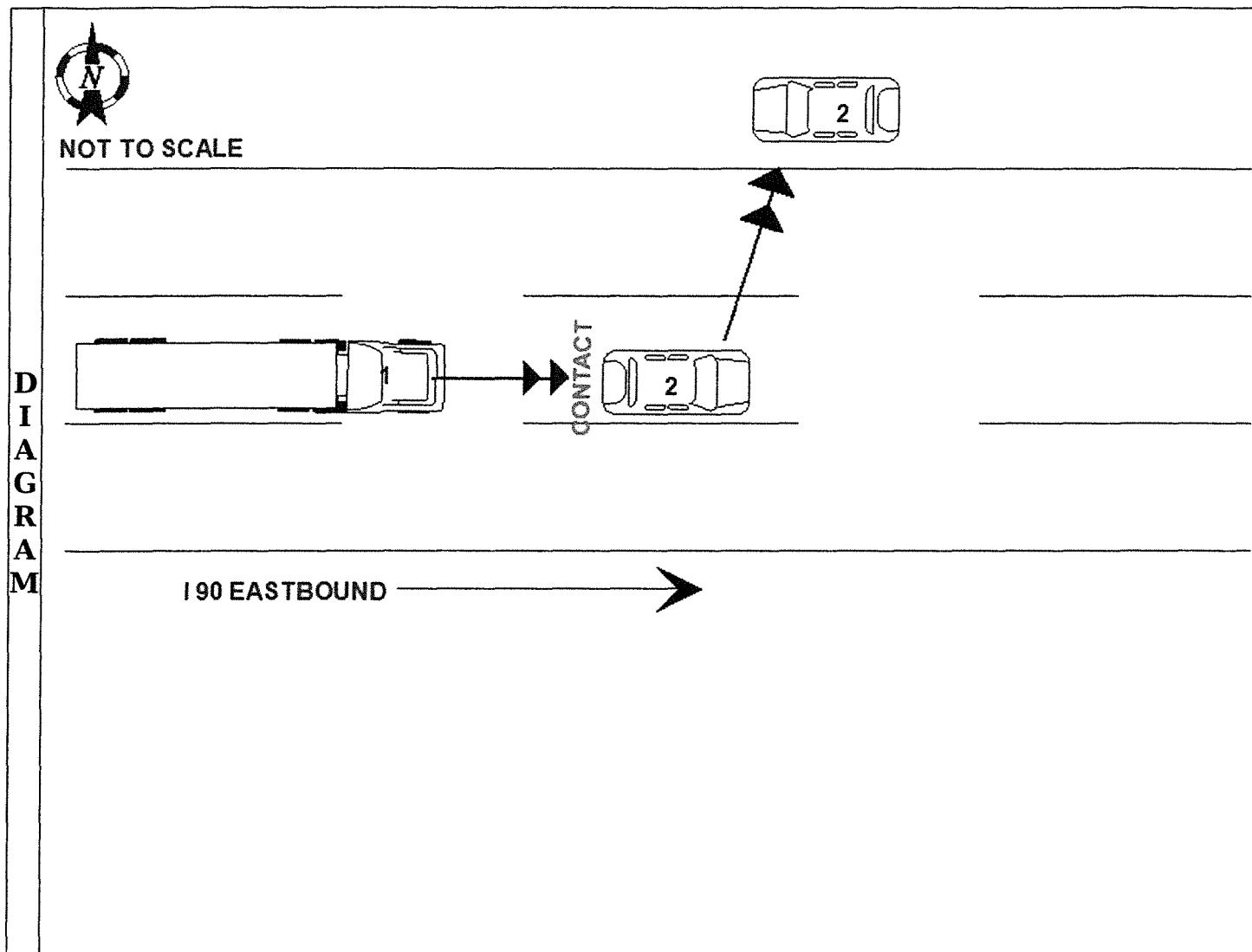
UNIT 002	Unit Type 01 - Motor vehicle in transport with driver					Hit and Run 02 - No	
	Driver's Name - Last AGETON		First TERI		Middle SUZANE		
	Address 109 W ALPINE CIR			Address (Line 2)			
	City BRANDON		State SD	Zip 57005	Date of Birth 11/03/1964	Sex 2 - Female	
				Non - Motorist Location 96 - Not Applicable			
				Non - Motorist Action 96 - Not Applicable			
	Phone 6053102633		DL State SD	DL Class 1	Non - Motorist Contributing Circumstances (Up to Two) 96 - Not Applicable		
	DL Status 01 - Normal within restrictions						
	Driver Contributing Circumstances (Up to Two) 00 - None			Drug Use 00 - None used		Drug Test 02 - Test not given	
	Vision Contributing Circumstance 00 - None			Alcohol Use 00 - None used		Alcohol Test 91 - Test not given	
	Injury Status 05 - No injury			Ejection 00 - Not ejected			
	Saftey Equipment 03 - Lap belt and shoulder harness used			Citation Charge? 02 - No			
	Seating Position 01 - Operator			Citation #1			
	Air Bag Deployed 00 - Not deployed			Citation #2			
	Transported To			Citation #3			
	Source of Transport 00 - Not Transported			Citation #4			
	Is Driver the Owner Yes						
	Owner's Name - Last AGETON		First TERI		Middle SUZANE		
	Address 109 W ALPINE CIR			Address (Line 2)			
	City BRANDON		State SD	Zip 57005	Red Tag A502083		
	Year 1999	Make Chevrolet - CHEV	Model MONTE CARLO		VIN 2G1WW12M4X9202993		
	License Plate # 1H6794		State SD	Year 2019	Estimated Travel Speed	Speed - How Estimated? 05 - No Estimate	
	Speed Limit 65	Total Occupants 1	Damage Extent 01 - Minor Damage		Vehicle Towed 02 - No		
	Damage Amount (Vehicle and Contents) 2000		Insurance Co. Name 25151 - STATE FARM GENERAL INSURANCE COMPANY				
	Insurance Policy # 098 2738 A20 41G			Effective Date 01/20/2019	Expiration Date 07/20/2019		
	Emergency Vehicle Use?			Vehicle Configuration 01 - Passenger car			
	Trailer Type 00 - No trailer/attachment			Cargo Body Type 00 - No cargo body			
Direction of Travel Before Crash 03 - Eastbound		Trailer LP # Attached to Power Unit		State	Year		
Initial Point of Impact 08 - Position 8	Most Damaged Area 08 - Position 8	Trailer 2 License Plate #		State	Year		
Underride/Override 00 - No underride or override		Trailer 3 License Plate #		State	Year		
Traffic Control Device Type 00 - No controls			Vehicle Contributing Circumstance 00 - None				
Vehicle Maneuver 01 - Straight ahead			Road Contributing Circumstance 00 - None				

First Event 25 - Motor vehicle in transport			Second Event 04 - Ran off road left		
Third Event			Fourth Event		
Most Harmful Event for this Vehicle 25 - Motor vehicle in transport					
<input type="checkbox"/> Does the accident involve one or more of the following: <ul style="list-style-type: none"> a truck having a GCWR of 10,001 or more pounds; OR a vehicle displaying a hazardous material placard; OR a vehicle designed to transport 9 or more people, including driver 			<input type="checkbox"/> Did the accident result in one or more of the following: <ul style="list-style-type: none"> a fatality; OR an injury requiring transportation for immediate medical attention; OR a vehicle was disabled requiring a towaway from the scene 		
Accident Involved Vehicle - Purpose			Carrier Name		
Street Address			Street Address (Line 2)		
City	State	Zip	US DOT # 98	GVWR	GCWR
Hazardous Material Released?	Hazardous Material Content Code	Hazardious Material Class Code		Hazardous Materials Description	

Work Zone Related? 02 - No	First Harmful Event? 25 - Motor vehicle in transport
Workers Present?	Location of First Harmful Event 01 - On roadway
Work Zone 96 - Not Applicable	
Work Zone Location 96 - Not Applicable	Trafficway Description 03 - Two-way, divided, unprotected (painted >4 feet) median
Manner of Collision 04 - Sideswipe, same direction	Light Condition 03 - Dark - lighted roadway
School Bus Related? 00 - No	Weather Conditions (up to two) 05 - Snow

D O A M A G E D	Damaged Object (Property Other Than Vehicles)		Estimate of Damage	
	Owner's Full Name - Last		First Name	Middle Name
	Address		Address (Line 2)	
	City	State	Zip	

I N J U R Y	Unit #	Last Name	First Name		Middle Name
	Address		Address (Line 2)		
	City	State	Zip	Date of Birth	Sex
	Injury Status		Ejection		
	Seating Position		Safety Equipment		
	Air Bag Deployed		Source of Transport		
D	Transported to		EMS Trip #		

**NARRATIVE**

UNIT 1 WAS TRAVELING EASTBOUND ON I 90 NEAR MILE MARKER 399 WHEN IT COLLIDED WITH THE REAR END OF UNIT 2 ON I 90. UNIT 2 CONTINUED INTO THE MEDIAN AND CAME TO A REST.

W I T N E S S	Last Name		First Name		Middle Name	
	Address					
	Address (Line 2)					
	City	State	Zip	Phone #		

Date Notified 02/01/2019	Time Notified 18:55 Hrs.	Date Arrived 02/01/2019	Time Arrived 18:55 Hrs.
Agency Type 01 - Highway patrol	Investigation Made at Scene? 01 - Yes	Photos Taken? N	Date Approved 02/05/2019
Approval Officer	Last Name WOSJE	First Name MATT	Middle Name